

AGREEMENT OF SALE OF PERSONAL PROPERTY

THIS AGREEMENT is made and entered into as of the 1<sup>st</sup> day of ~~February~~ March, 1976, by and between KAISER GYPSUM COMPANY, INC., a corporation (hereinafter called "Seller") and PRO-LINE PRODUCTS, INC., a corporation (hereinafter called "Buyer").

The parties agree as follows:

ARTICLE A. RECITALS AND DEFINITIONS.

A-1. As used herein, the "Equipment" shall mean all of the personal property described on Exhibit A, attached hereto and incorporated herein by this reference, located on that certain real property being leased by Seller from John V. Farrell, LeeAnn Farrell, Frank Lenci, and Ruth Lenci pursuant to the Lease of March 24, 1969 as amended March 1, 1976 which Lease and Amendment are attached hereto as Exhibit B and incorporated herein by this reference (hereinafter collectively called the "Lease").

A-2. As used herein, the "Inventories" shall mean all raw materials and all finished packaged products in cartons and containers located on the leased premises described in the Lease on the date of the Agreement, and intended for resale or to be incorporated into property which is intended for resale.

A-3. As used herein, the "Collateral" shall mean and collectively refer to the Equipment and Inventories and the leasehold estate created by the Lease.

A-4. Seller is the owner of the Equipment and Inventories, and Buyer desires to purchase from Seller, and Seller desires to sell to Buyer the Equipment and Inventories on the terms and conditions herein contained.

A-5. Expressly excluded from the sales and purchases hereunder are Seller's finished goods inventory and all cartons, containers and other packaging bearing Seller's name, except those referred to in Article I of this Agreement.

ARTICLE B. SALE AND PURCHASE OF EQUIPMENT.

B-1. Seller hereby grants, bargains and sells to Buyer, and Buyer hereby purchases from Seller the Equipment, "as is" and "where is" for the total purchase price of \$125,000 of which Buyer has paid Seller concurrently herewith the sum of \$50,000. The balance of the purchase price (\$75,000) is represented by that certain Promissory Note of even date herewith in the principal amount of \$75,000 executed by Buyer in favor of Seller, receipt of which is hereby acknowledged by Seller (hereinafter called the "Equipment Promissory Note").

B-2. Buyer shall bear and pay any and all State of Washington sales taxes imposed in connection with the sale of the Equipment.

B-3. All Equipment is sold f.o.b. Seller's Seattle, Washington plant.

ARTICLE C. SALE AND PURCHASE OF INVENTORIES

C-1. Seller hereby grants, bargains, and sells to Buyer and Buyer hereby purchases from Seller the Inventories "as is" and "where is" for the

total purchase price of \$ 60,262<sup>00</sup> represented by that certain Promissory Note of even date herewith in the principal amount of \$ 60,262<sup>00</sup> executed by Buyer in favor of Seller, receipt of which is hereby acknowledged by Seller (hereinafter called "Inventories Promissory Note").

C-2. Buyer shall pay any and all State of Washington sales taxes imposed in connection with the sale of the Inventories.

C-3. All inventories are sold f.o.b. Seller's Seattle, Washington plant.

ARTICLE D. SUBLETTING OF LEASE.

D-1. Subject to the provisions of the Leasehold Mortgage, Seller hereby sublets to Buyer all of its right, title, and interest under the Lease, and Buyer hereby assumes all of the duties and obligations of the lessee under the Lease. Buyer agrees to indemnify Seller from any liability under, or pursuant to, the terms of the Lease arising after this date. Rents due under the Lease shall be prorated between the parties as of the date of this Agreement.

ARTICLE E. SECURITY INTEREST.

E-1. Buyer hereby grants to Seller a present security interest in the Collateral and all additions and accessions thereto and amounts and proceeds therefrom, and a mortgage of its leasehold estate in the Lease (hereinafter called the "Leasehold Mortgage") to secure the performance and/or payment of Buyer's obligations under both the Equipment Promissory Note and the Inventories Promissory Note, and to further secure the performance of Buyer's duties and obligations hereunder. After payment in full of the Inventories Promissory Note, Seller will subordinate its security interest in Buyer's inven-\*

E-2. Buyer hereby agrees that at all times prior to payment in full of both the Equipment Promissory Note and the Inventories Promissory Note, the Equipment and Inventories: \*to be subordinated to the security interest therein of bank's financing Buyer's inventories.

(a) Will not be misused, abused, wasted, or allowed to deteriorate except for ordinary wear and tear occurring from its intended primary use;

(b) May be examined and inspected by Seller at any reasonable time and wherever located;

(c) Will be insured at Buyer's sole cost and expense, until this Security Agreement is terminated, against all risks to which it is exposed and those which Seller may reasonably designate, with the policies acceptable to Seller and payable to both Seller and Buyer, as their interests appear, and providing for ten (10) days' minimum cancellation notice to Seller, and with duplicate policies deposited with Seller; and

(d) Will be kept at the leased premises described in the Lease referenced in Article D (or at such other place within the State of Washington to which Buyer may relocate the operation of its business, of which Buyer will promptly give Seller written notice); provided, however, that the Collateral shall not be removed for any purpose whatsoever to a location outside the State of Washington unless Buyer gives Seller written notice and Seller gives written consent in advance of the contemplated removal.

E-3. The Equipment shall not be sold, transferred, or otherwise disposed of or be subjected to any unpaid charge, including taxes, or to any subsequent interest of a third person created or suffered by Buyer voluntarily or involuntarily, unless Seller gives written consent in advance to such charge, transfer, disposition or subsequent interest.

E-4. Buyer shall sign and execute alone or with Seller any financing statement or other document or procure any document necessary to protect the security interest under this Agreement against the rights or interests of third parties.

E-5. The Inventories shall not be sold by Buyer except in the ordinary course of business, but a sale in the ordinary course of business shall not include any transfer or sale in satisfaction, partial or complete, of a debt owing by Buyer. Buyer will, from time to time, execute and deliver to Seller such lists, descriptions and designations of Inventories or Seller may require to identify the nature, extent and location of Inventories.

ARTICLE F. DEFAULT AND REMEDIES.

F-1. The occurrence of any of the following shall constitute a default under this Agreement:

(a) Failure of Buyer to pay to Seller, as and when due, any or all payments required under either the Equipment Promissory Note or the Inventories Promissory Note;

(b) Any misstatement or false statement made by Buyer in connection with the Agreement, or noncompliance with or nonperformance of any of Buyer's obligations, agreements or affirmations under or emanating from this Agreement;

(c) Any noncompliance with or nonperformance of any of Buyer's obligations, agreements or affirmations under or emanating from the Lease.

(d) The dissolution, termination of existence, insolvency, business failure, appointment of a receiver or any part of the property of, assignment for the benefit of creditors by, the calling of a meeting of creditors of, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Buyer.

F-2. In the event of any default hereunder by Buyer, Seller may exercise any or all of its rights and remedies under the Washington Uniform Commercial Code and the Leasehold Mortgage. In addition, Seller may require Buyer to assemble the Collateral and make it available to Seller at a place to be designated by Seller that is reasonably convenient to both parties, and/or enter on Buyer's premises and take possession of, assemble and collect the Collateral or render it unusable. All rights and remedies of Seller shall be cumulative and may be exercised successively or concurrently and without impairing Seller's security interest in the Collateral.

F-3. Seller may delay or omit to exercise any right or remedy under this Agreement without waiving such right or remedy or any other right or remedy. The rights and remedies available to Seller hereunder may be waived only by written notice to Buyer thereof, signed by an authorized officer of Seller.

#### ARTICLE G. ASSIGNMENT.

G-1. Seller may assign this Agreement in conjunction with any assignment of the Equipment Promissory Note, the Inventories Promissory Note, or both of them.

G-2. In the event of the assignment of this Agreement by Seller, the assignee shall be entitled, upon notification to Buyer, to the security interest in the Collateral to secure the performance or payment of Buyer's obligations under the assigned promissory note and as stated in this Agreement, and the assignee shall be entitled to all of Seller's rights and remedies hereunder.

G-3. Buyer shall assert no claims of defenses which it may have against Seller against the assignee except those granted in this Security Agreement.

ARTICLE H. NO WARRANTIES.

H-1. The sale of the Equipment and Inventories and each and every portion thereof, is made "as is" and "where is", and Seller has made, makes, and shall make no representations or warranties of any kind or nature, express or implied, with respect to the merchantability, quality or fitness or the Equipment or Inventories for any purpose or with respect to the condition of the Equipment or Inventories, and other warranties of whatever kind are hereby disclaimed by Seller and excluded. Buyer assumes full and complete responsibility with respect to the condition, state of repair, or lack of repair of all or any portion of the Equipment and Inventories, and Seller has and shall have no obligation or liability of any kind either to Buyer or any third parties with respect thereto.

ARTICLE I. PATENTS, TRADEMARKS.

I-1. So long as Buyer is in good standing under this Agreement, and the Lease, and is not in default under either the Equipment Promissory Note or the Inventories Promissory Note, Buyer shall have a nonexclusive license to use the trade secrets, formulas, specifications, know-how, technology, special equipment, and related patents of Seller until April 30, 1979 in the production of the following products currently manufactured and sold by Seller in its Seattle accessories plant:

- (i) Joint compound in the forms of powder and wet paste;
- (ii) Wall texture, i. e., a dry powder for use in textured walls;
- (iii) Ceiling texture, a dry powder for use with mixtures for application to ceilings.

No right is granted to use any other proprietary right of Seller including trademarks and trade names, except that for a period of three months from the effective date hereof Buyer shall have the right to sell the inventory of the aforesaid materials which are packaged by Seller in containers bearing Seller's trademarks or other indicia of origin with Seller, so long as said goods are not altered in any manner.

ARTICLE J. MISCELLANEOUS.

J-1. Buyer hereby represents and warrants to Seller that all information supplied and statements made in any financial or credit statement deposited by Buyer or at Buyer's request with Seller at any time are true, correct, complete, valid and genuine.



J-2. In the event Seller shall without fault on its part be made a part to any litigation by or against Buyer and based upon, arising out of or otherwise connected with this Agreement, Buyer shall pay all costs and expenses, including reasonable attorneys' fees, incurred by or imposed on Seller in connection with such litigation. In the event of any court action brought by either party hereto against the other to enforce or interpret any of the terms, covenants, or conditions of this Agreement, the prevailing party in such action shall be entitled to recover against the other party all costs, expenses, and reasonable attorneys' fees incurred in such action.

J-3. This Agreement and all documents in conjunction therewith shall be construed in accordance with the laws of the State of Washington, and such laws shall govern the interests, rights and duties of the parties hereto.

J-4. If any of the provisions of this Agreement shall contravene or be held invalid under the laws of any jurisdiction, this Agreement shall be construed as if not containing those provisions and the rights and obligations of the parties shall be construed and enforced accordingly.

J-5. To the extent permitted by law, Buyer hereby waives compliance with the Bulk Sales Act of Washington, and all similar Acts relating to bulk sales which may be applicable, but if any such Act requires the furnishing of any verified list or statement of the names and addresses of any or all creditors of Seller, Seller shall cause to be furnished to Buyer, at least ten (10) days prior to the Closing Date, such verified list or statement in form sufficient to permit Buyer to comply with such Acts which are applicable.

J-6. Buyer shall indemnify and save Seller free and harmless from and against any and all loss, liability, damages, claims, costs or attorneys' fees for injury to or death of person, or damage to or loss of property in any way arising directly or indirectly out of or in any way connected with the following:

(a) Any and all operations or activities of Buyer, its agents, employees and contractors on or about the premises described in the Lease referenced in Article D.

(b) Any defaults, breaches, failures, or delays in performance by Buyer under or in connection with the Lease expressly assumed by Buyer under and pursuant to the provisions of Article D.

(c) Any breach of any representation or warranty under this Agreement and any breach of this Agreement or default of performance hereof by Buyer.

J-7. All notices, demands, or other communications required or permitted under this Agreement shall be fully given or made or sent when made in writing and deposited in the United States mail, registered and postage prepaid, and addressed to the party to whom given as follows:

If to Seller:

Kaiser Gypsum Company, Inc.  
300 Lakeside Drive  
Oakland, California 94666

If to Buyer:

Pro-Line Products, Inc.  
P. O. Box 407  
14960 N. E. 90th  
Redmond, Washington 98052

The address to which any notice, demand, or other writing may be given or made or sent to either party may be changed upon written notice given by such party to the other as above provided.

J-8. The captions of this Agreement are for convenience only and are not to be construed as part of this Agreement and shall not be construed as defining or limiting in any way the scope of intent of the provisions hereof.

J-9. All of the covenants, conditions, and terms of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

J-10. This Agreement contains the entire agreement of the parties regarding the subject matter hereof and supersedes all prior discussions, negotiations, understandings, and agreements or representations with respect thereto. Whether written or oral, except to the extent expressly incorporated herein. No waiver of any provision of this Agreement in any instance shall constitute waiver of any other provision of this Agreement or of the same provision in any other instance, and the waiver of any breach of any provision of this Agreement shall not constitute a waiver of any other breach under such provision or of any other provisions of this Agreement.

J-11. The parties agree to prorate any real property taxes on the leased premises and any personal property taxes on the equipment or inventories between them as of the date of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

KAISER GYPSUM COMPANY, INC.

PRO-LINE PRODUCTS, INC.

By  \_\_\_\_\_

James P. Rowe

Title Vice President, Marketing

By  \_\_\_\_\_

Title PRESIDENT